



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100  
ACTION MEMO

COMPTROLLER

TO: UNDER SECRETARY OF DEFENSE (COMPTROLLER)  
PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE  
(COMPTROLLER)

THRU: DEPUTY CHIEF FINANCIAL OFFICER

FROM: DIRECTOR, ACCOUNTING AND FINANCE POLICY AND ANALYSIS

PA  
3/24/05

SUBJECT: Proper Use of Interagency Agreements for Non-Department of Defense  
(DoD) Contracts Under Authorities Other Than the Economy Act

DISCUSSION: On March 17, 2005, you signed a memo that provides financial management guidance for the proper use of interagency agreements for non-DoD contracts, and directs the Components to take actions to review unobligated balances (at Backup). We did not distribute that memo because of concerns raised by the Office of Deputy General Counsel (Fiscal) (ODGC(F)) and the General Services Administration (GSA).

- We revised the guidance in the memo after discussions with the ODGC(F) and the GSA.
- The attached memo does the following:
  - Amends the "Services" section to address a more expansive authority of Section 2410a of Title 10 United States Code (USC) and Section 253 of Title 41 USC. The Department's position is that these authorities to contract for severable services apply to interagency agreements and contracts.
  - Clarifies the guidance in the "Performance" section based on a meeting with the Inspector General, DoD, regarding the results of a recent audit of this issue.
  - Clarifies that this guidance applies to interagency agreements for non-DoD contracts under authorities other than the Economy Act.

RECOMMENDATION: That you sign the attached memo.

COORDINATION: ODGC(F), OUSD(AT&L)

Attachments:  
As stated

Prepared By: Weishaar/A&FP&A/March 15, 2005/A&FP&A-P-0102/File: 302.04



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

MAR 24 2005

COMPTROLLER

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(FINANCIAL MANAGEMENT AND COMPTROLLER)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Proper Use of Interagency Agreements for Non-Department of Defense  
Contracts Under Authorities Other Than the Economy Act

Billions of dollars have been provided by Department of Defense (DoD)  
Components to the General Services Administration (GSA) Federal Technology Service  
and other Federal agencies, by agreement, to acquire a wide variety of supplies and  
services.

Based on recent work by the DoD Office of Inspector General (OIG), it appears  
that some interagency agreements continue to be used in an attempt to keep funds available  
for new work after the period of availability for those funds has expired. This was the  
subject of the DoD Comptroller memorandum dated September 25, 2003, subject: "Fiscal  
Principles and Interagency Agreements" (Attachment 1). This memo, in conjunction with  
DoD Comptroller and DoD Acquisition, Technology and Logistics memorandum dated  
October 29, 2004, subject: "Proper Use of Non-DoD Contracts" (Attachment 2),  
establishes DoD policy that includes assisted acquisitions.

To ensure interagency agreements (under other than the Economy Act) for non-  
DoD contracts are used in accordance with existing laws and DoD policy, and to save  
Government resources, the following actions should be completed by June 1, 2005:

- Completed agreements. All interagency agreements shall be reviewed to  
determine if they are complete. Completed agreements shall be closed out, and  
the financial accounts shall be adjusted to ensure the return of any funds held  
by servicing agencies, irrespective of whether the funds have expired.
- Services. Funds provided to a servicing agency that are now past their period  
of availability ("expired funds") shall, in the case of services, be deobligated  
and returned from the servicing agency unless all of the following criteria are  
met--
  - the order was made during the period of availability of the funds;
  - the order was specific, definite and certain, with specificity similar to  
that found in contractual orders; **and**

- in the case of severable services, the performance period does not exceed one year.
- Goods. Funds provided to a servicing agency that are now expired shall, in the case of ordered goods, be deobligated and returned from the servicing agency unless the request for goods was:
  - made during the period of availability of the funds; **and**
  - for an item that, solely because of delivery, production lead time, or unforeseen delays, could not be delivered within the period of availability of those funds.
- Limitation on Work. Expired funds shall not be available for work outside the original interagency agreement.
- Performance.
  - DoD expired funds may be used by a servicing agency to enter into a non-severable service contract, provided the interagency agreement was properly executed while the funds were available and with the good faith intent that the servicing agency commence work and perform without unnecessary delay.
  - DoD expired funds may *not* be used by a servicing agency to enter into a severable services contract. However, DoD expired funds may *continue* to be used for a severable services contract, properly entered into by the servicing agency *before* the funds expire, provided the period of contract performance does not exceed one year.
- Oversight. Interagency agreements in excess of the simplified acquisition threshold shall comply with the DoD policy memorandum, "Proper Use of Non-DoD Contracts," (Attachment 2); the DoD Components' procedures for proper use of non-DoD contracts; the procedures found in the Federal Acquisition Regulation Part 7, "Acquisition Planning" and Part 17.5, "Interagency Acquisitions Under the Economy Act," and DoD Instruction 4000.19, "Interservice and Intragovernmental Support."

The GSA provided a summary of unobligated funds by DoD Component and fiscal year as of December 30, 2004 (Attachment 3). You are to immediately initiate needed actions to review these unobligated balances, coordinate with GSA to return unobligated balances to your respective offices, and coordinate with your servicing accounting office to ensure that appropriate adjustments to the accounting records are recorded before June 1, 2005. You are to certify to my office, no later than June 30, 2005, that you have completed these actions in accordance with the DoDFMR, Volume 3, Chapter 8, Section 0804, "Tri-Annual Review of Commitments and Obligations." In addition, all potential violations of the Antideficiency Act detected during this review shall be processed promptly in accordance with the Department of Defense Financial Management Regulation (DoDFMR), Volume 14.

My point of contact for this matter is Ms. Carol Phillips at 703-693-6503, or e-mail at carol.phillips@osd.mil. My point of contact for tri-annual reviews is Mr. Oscar Covell at 703-697-6149, or e-mail at oscar.covell@osd.mil.

  
Teresa McKay  
Deputy Chief Financial Officer

Attachments:  
As stated

cc:  
USD (AT&L)

The following is an email message from Kathleen Turco, GSA's Chief Financial Officer, (sent by LeShonne Smith on June 16, 2005) that provides clarification of the March 24, 2005 DoD memo entitled "Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act".

"To All: Follow-up and clarification on DoD Memo dated March 24, 2005, "Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act"

Recently, an interpretation of a section of the DoD Comptroller memorandum dated March 24, 2005 has been in question. The GSA CFO contacted the DoD Deputy CFO and obtained clarification on the following question:

Please clarify the paragraph on page 2, of March 24, 2005 memo under Performance –

- DoD expired funds may not be used by a servicing agency to enter into a severable services contract. However, DoD expired funds may CONTINUE to be used for severable services contract, properly entered into by the servicing agency BEFORE the funds expire, provided the period of contract performance does not exceed one year.

**GSA Question:** If we have entered into a IA or MIPR with DoD personnel obligating the funds in the DoD financial system during the *current* fiscal year, does this paragraph prohibit GSA from obligating annual funds for contracts for severable services *after* the close of a fiscal year?

**DoD answer:** No, GSA as the servicing agency is recognized as the performing entity and how you perform the service is up to GSA. If in the performance of the contractual service it requires time that spans from current fiscal year in to the next fiscal year for GSA to move the request from an unfilled customer order by placing the order with the vendor (thereby GSA records an obligation for an undelivered order), it is acceptable.

The GSA CFO and GSA Counsel would like to add the following information to the discussion:

The DoD memo is correct in that DoD personnel may not legally obligate past the close of the fiscal year or obligate expired funds in DoD's financial books per the memo's sentence. Past the close of a fiscal year, no Federal agency, whether a client of ours or not, can obligate expired funds - it is illegal. This is in title 31, under budget enforcement rules (from 1921, 1950) and the GAO red book. You will not see it printed anywhere explicitly because it is taught in federal budget classes, etc as rule #1 in budget and finance - don't use expired funds - ever!

Kathleen M. Turco  
Chief Financial Officer  
General Services Administration  
202-501-1721 Office  
202-246-5624 Cellular

CREATING A SUCCESSFUL FUTURE AT GSA  
by Living our values every day and working together to achieve our goals”



UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
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SEP 25 2003

COMPTROLLER

MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Fiscal Principals and Interagency Agreements

Recent media attention has focused on the impropriety of using interagency agreements to "bank" funds that would otherwise expire at the end of the fiscal year. For Economy Act agreements, this is expressly forbidden. The Economy Act requires servicing agencies to return unobligated funds to requesting agencies before the funds would expire.

However, some Federal agencies have separate legal authority to provide services—including contracting services—without the need to return unobligated funds at year's end. The Department of Interior's GovWorks and the General Services Administration's Federal Technology Service (FTS) are just two examples. These programs provide legitimate and useful services, but they are not intended solely to extend an appropriation's period of availability.

Every order under an interagency agreement must be based upon a legitimate, specific and adequately documented requirement representing a *bona fide* need of the year in which the order is made. As always, adequate funds of the appropriate type (procurement, O&M, etc.) must be available. If these basic conditions are met, these servicing agencies may retain and promptly obligate the funds in the *following* fiscal year. On the other hand, an interagency agreement may not be used in the last days of the fiscal year solely to prevent funds from expiring or to keep them available for a requirement arising in the following fiscal year.

As we close out each fiscal year, contracting officials and accountable officers must resist the misguided desire to bank government funds through improper use of interagency agreements. Misuse of interagency agreements may result in disciplinary action, adverse media attention, and additional congressional limitations and oversight Department-wide.

Dov S. Zakheim

cc: ODGC(F)





# OFFICE OF THE SECRETARY OF DEFENSE

1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000



OCT 29 2004

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Proper Use of Non-DoD Contracts

Each year billions of Department of Defense (DoD) dollars are spent using non-DoD contracts to procure supplies and services. In many cases this represents an effective way to accomplish acquisitions in support of DoD's mission. For this reason, the use of non-DoD contracts is encouraged when it is the best method of procurement to meet DoD requirements. However, recent DoD and General Services Administration Inspector General reports identified several issues associated with the Department's use of non-DoD contracts for the acquisition of certain supplies and services. Non-DoD contracts may not be used to circumvent conditions and limitations imposed on the use of funds, nor are they a substitute for poor acquisition planning.

Military Departments and Defense Agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold. This requirement applies to both direct (*i.e.* orders placed by DoD) and assisted acquisitions (*i.e.* contracts awarded or orders placed by non-DoD entities, including franchise funds, on behalf of DoD), using DoD funds. These procedures must include:

- evaluating whether using a non-DoD contract for such actions is in the best interest of the DoD. Factors to be considered include:
  - satisfying customer requirements;
  - schedule;
  - cost effectiveness (taking into account discounts and fees); and
  - contract administration (including oversight);
- determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- reviewing funding to ensure it is used in accordance with appropriation limitations;
- providing unique terms, conditions and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives and other requirements, (*e.g.* the requirement that all clothing procured with DoD funding be of domestic origin); and
- collecting data on the use of assisted acquisitions for analysis.

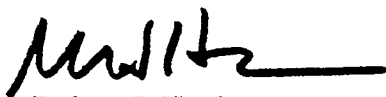


This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued, by an official of the United States outside of the DoD." Although Section 801 applies only to the procurement of services, we are applying this requirement to supplies in order to achieve consistency and discipline in the DoD acquisition process. The Defense Acquisition Regulation Council will issue coverage for the Defense Federal Acquisition Regulation Supplement that is consistent with the requirements of this memorandum.


The use of multiple award contracts must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) Part 8.002 (Priorities for Use of Government Supply Sources); FAR Part 17.5 (Interagency Acquisitions under the Economy Act); FAR Part 7(Acquisition Planning); and DoD Instruction 4000.19 (Interservice and Intragovernmental Support).

While the Program Manager or requirements official has primary responsibility to ensure compliance with this policy, success will not be achieved without a team approach and specific support from the financial management and contracting communities. For example, the financial management community shall: (1) ensure the program manager or other appropriate individual has certified that the procedures established by the Military Department or Defense Agency have been followed and (2) ensure that funds are available and appropriate for the procurement action.

Please ensure widest dissemination of this memorandum and the procedures you establish. It is imperative that when non-DoD contracts are utilized to meet DoD requirements, they are utilized properly. The point of contact on this matter is Mr. Michael Canales. He can be reached at (703) 695-8571 or via email at michael.canales@osd.mil.



Robert J. Henke  
Principal Deputy Under Secretary  
of Defense (Comptroller)



Michael W. Wynne  
Acting Under Secretary of Defense  
(Acquisition, Technology, and Logistics)



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